IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

Docket No. 73- 265

IN THE MATTER

OF

LAURENCE SEMEL,

Bankrupt-Petitioner,

FEDERAL SUPPLY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

LAURENCE SEMEL,
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IN THE MATTER

OF

LAURENCE SEMEL,

Bankrupt-Petitioner,

FEDERAL SUPPLY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit.

To the Honorable Justices of the Supreme Court of the United States:

The petition of Laurence Semel, the above named petitioner, says that on June 27, 1973 a judgment was filed in the United States Court of Appeals for the Third Circuit, Docket No. 72-2058, in which the Court of Appeals af-

firmed a judgment of the Uinted States District Court for the District of New Jersey made on October 11, 1972 that an order theretofor made by the referee in bankruptcy granting the discharge of the bankrupt should be vacated. A copy of the opinion delivered upon the rendering of the said judgment of the United States Court of Appeals for the Third Circuit was filed on June 27, 1973 and entered on the same date. A copy of both opinions sought to be reviewed is appended hereto.

Jurisdiction is conferred upon this court by the provisions of 28 U.S.C. 1254.

The questions presented for review are as follows: Is it a violation of 18 U.S.C.A. § 152, to list a valueless asset under schedule B-3 (c) in a petition for bankruptcy instead of listing it under schedule B-3 (a)? Is it a violation of 18 U.S.C.A. § 152, to fail to list specifically each item of valueless unliquidated indebtedness rather than list it all as one blanket item with an estimated value placed thereon by the bankrupt? Should a bankrupt be denied his discharge where he made an error in judgment as to the proper manner of listing valueless indebtedness due to him?

Can the District Court judge reverse the referee in bankruptcy on the referee's finding of facts where the judge stated in his opinion that the referee's finding of facts must be sustained as not clearly erroneous?

Should a bankrupt be denied his discharge for stating a temporary address in his petition, which temporary address was in the District of New Jersey when it was proven that the bankrupt had resided in the District of New Jersey during all of his lifetime and up to and including the date of the filing of his petition of bankruptcy?

Should a creditor who had assigned its claim and was not the owner of a provable debt be permitted to file specifications of objections to the discharge?

Facts

A concise statement of facts of the case containing the facts material to the consideration of the questions presented is as follows:

Petitioner was adjudicated a bankrupt on April 11, 1968, In schedule B-3 (c) of his voluntary petition, the petitioner set forth as an asset,

> "possible claims for professional services, damages possible, contingent fees on legal matters heretofore handled, costs and disbursements advanced for clients."

In schedule B-3 (c) the printed form requires the following information:

> "unliquidated claims of every nature with their estimated value to be set forth."

The bankrupt inserted the estimated value as follows: "100.00". In schedule B-3 the requirement under heading (a) is "debts due petitioner on open account". Under heading (a) the bankrupt had inserted the word "none". There is no explanatory statement at the top of the page as to what is to be inserted in the dollar column but at the heading of the dollar column are the words "estimated value of debtors interest". The bankrupt estimated the outstanding indebtedness due him to be worth $100.00.

Reasons for Granting the Writ

The petitioner is a sixty-eight year old lawyer who endorsed notes, bonds and other obligations of a corporation. Although a lawyer of many years standing the petitioner had little or no knowledge of bankruptcy law and procedure but attempted to represent himself and in so doing unwittingly found himself in trouble. Denial of his discharge renders him hopelessly insolvent for the remaining years of his life which is contrary to the letter and spirit of the bankruptcy law.

The referee found no fraud. The reasoning of the District Court and the Court of Appeals is contrary to the law as laid down in *Bronston* v. *United States* decided on January 10, 1973 by the United States Supreme Court, Docket No. 71-1011.

There is not one iota of proof that the bankrupt intended to conceal an asset, which the referee found to be valueless.

Petitioner contends that the judgment of the United States District Court for the District of New Jersey vacating and setting aside the judgment of the referee in bankruptcy was improvidently entered and should be vacated and the said order of the referee in bankruptcy granting the discharge should be reinstated and the discharge granted.

ARGUMENT

POINT I

The bankrupt did not knowingly and fraudulently make a false oath of account in or in relation to his bankruptcy proceeding.

In a prior involuntary bankruptcy proceeding against him, the bankrupt answered the following questions on cross-examination.

> Q. And did people owe you money on May 1, 1967?
>
> A. Many people owed me money.
>
> Q. How much money was owed to you on May 1, 1967?
>
> A. Probably in excess of a quarter of a million dollars.

Upon examination of the bankrupt under section 21a, at the first meeting of creditors under his voluntary petition the following questions were asked and answered:

> Q. Does anybody owe you money?
>
> A. Yes, lots of people owe me money.
>
> Q. Did you list these people on your schedules?
>
> A. I listed an item here covering that point.

From the very inception of the voluntary petition which was filed sometime later the objecting creditor has endeavored to make capital of this one statement made under cross-examination. It is clear that the bankrupt made no statement as to exactly how much money was due to him at the time. During the course of the examination under section 21a the referee ordered the bankrupt to make up a list of the indebtedness. After

taking an appeal to the Court of Appeals the bankrupt managed to compile a list of indebtedness due him which were in the main items which were due to the bankrupt for legal services which had been rendered over the past thirty-eight years. The referee subsequently found that the alleged indebtedness due to the bankrupt was valueless.

Both the District Court and the Circuit Court are of the opinion that those items should have been listed in the same specific manner as they were set forth in the list made up by the bankrupt subsequent to the filing of the petition. The District Court and the Appellate Court said that because the list was not specific the bankrupt had falsified the petition, notwithstanding the fact the referee found as a matter of fact that although the the itemized statement was omitted from the petition it was not a fraudulent omission. In his opinion dictated from the bench as set forth in the transcript of June 30, 1970 the referee said:

> "* * * specifically in regard to specification No. 2, unquestionably the statement in the schedules that there were no monies due was false but I cannot convince myself that the false statement was knowingly and fraudulently made.
>
> This proceeding first in the voluntary and now in the involuntary has been a comedy of errors. I do think that the financial circumstances in which Mr. Semel found himself have produced stress. As to that, at times, I do not think he is quite sure of the situation in which he has found himself.
>
> We are talking about $250,000. I would be surprised if there was ever a dollar collected."

It would seem that the primary purpose in requiring a bankrupt to list his assets is to make certain that they

were called to the attention of the trustee so that the trustee could take whatever steps were required in order to determine whether the alleged assets can be converted into cash.

Examination of the testimony taken in the "prior" involuntary petition in bankruptcy will indicate that the alleged bankrupt on direct examination did not rely up on a value placed upon the accounts receivable. The first bankruptcy was successfully resisted because of the fact that the referee was satisfied that the bankrupt had no personal obligations due to anyone at the time but that all of his indebtedness was contingent since it was based upon endorsements of corporate indebtedness and that the corporation was in Chapter XI and therefore there was a possibility that the alleged bankrupt never would be obliged to pay on those obligations. It was not until sometime later that an interlocutory judgment of approximately $70,000 was obtained against the bankrupt based upon such an endorsement which caused him to file the personal involuntary petition.

It seems erroneous for the District Court and the Appellate Court to reverse the referee and find that the bankrupt had originally successfully resisted bankruptcy because of questions asked to him on cross-examination about money which was due and owing to him which had nothing to do with the original case and was not the basis upon which the referee decided the involuntary case. The entire record of the first case was presented to the Appellate Court in order to verify this point. At the time the second petition was filed, which was voluntary, the bankrupt was of the opinion, which may have been erroneous, that the monies due him were worthless. The referee later found this to be a fact and since they were worthless they more properly should be scheduled as one item under schedule B-3 (c) rather than being specifically listed under schedule B-3 (a).

In any event the trustee had notice of the fact that there was some money due and owing to the bankrupt attorney and he had ample opportunity to try to realize something out of it if he chose to put forth the effort to do so. The referee and the trustee knew and were satisfied that the alleged accounts receivable were uncollectable.

In the statement of the bankrupt that "if somebody undertook to check out these people now, institute suits and prosecute them that money would be recovered" was not a statement of fact. It was nothing more than an opinion. Certainly an opinion as to whether or not monies due to a bankrupt had any value can not be considered to be such a question of fact as would constitute a violation of Title 18 U.S.C.A. § 152. A person who is under the stress and strain of an examination in a bankruptcy proceeding was not lying when he stated that many people owed him money and took a guess that it was "in excess of a quarter of a million dollars". No statement was ever made as to an actual amount. It was just a guess. It is common knowledge that money due and owing to an attorney for legal fees in many instances is not paid because it is not the general practice of lawyers to sue clients for fees, in addition to which all claims for legal fees are actually unliquidated and are subject to the scrutiny of the court. In this particular case the bankrupt was of the opinion that they came under the category of unliquidated claims for damages and should certainly not be placed in the category of debts due on open account such as would be due to a business man for work, labor, and services rendered or materials furnished. It would seem that it is contemplated that such latter indebtedness would be listed under schedule B-3 (a) as "debts due to the bankrupt in open account'. As was said by the referee in bankruptcy,

> "• • • this was nothing more than a comedy of errors."

The referee found that the bankrupt had not made statements which were "knowingly and fraudulently made".

POINT II

The District Court was in error in reversing the referee in bankruptcy on a question of fact when the District Court itself found that the referee's findings of fact were not clearly erroneous.

In its opinion the District Court said:

> "The Referee dismissed Specification two because he found that the debts owing to Semel to be 'all or substantially all uncollectable'. While there is much within the record to contradict this finding it must be sustained as not clearly erroneous. As the debt was uncollectable it was not really an asset and its omission from the bankruptcy schedule, while knowingly and presumedly fraudulent was not material."

The United States District Court then went on to say in its opinion that statements made in a prior proceeding only a year before were inconsistent with the representations made by the bankrupt in improperly listing the money which was due to him. The only thing the bankrupt said at anytime in the case was that many people owed him money and he estimated that it was over a quarter of a million dollars, but nowhere did he say that the indebtedness was good, bad, or indifferent. It is inconceivable that any court in a proceeding of this kind would

find that a mere guess or estimate of a person under financial and personal stress is an absolute statement of fact and that is exactly what has been done in this case by the District Court not withstanding the fact that the referee in bankruptcy found that the manner of listing the asset was not "fraudulent". It seems that the District Court as well as the Appellate Court went far afield in reversing the referee as to a finding of fact which is not clearly erroneous. This is contrary to General Order in Bankruptcy No. 47.

POINT III

United States District Court errored in finding that the bankrupt used a temporary residence in his petition for some illegal or illicit purpose.

In his opinion the judge in the United States District Court said,

> "While passing on the subject of a judicative integrity, the court wishes to comment upon specification No. 1 which charges that at the time Semel filed his voluntary petition of bankruptcy he actually resided with his wife at 60 Parkway Drive, East Orange, New Jersey, whereas his petition states he resided at 104 Broadway, Long Branch, New Jersey. * * * while the referee rightly concluded that this defalcation was hardly grave enough to bar the bankrupt's discharge * * * it reflects seriously upon Semel's attitude toward his obligations as an officer of the court. The court can only speculate why Semel insisted upon the Long Branch address until pressed to his later admission."

Speculation is not proof. In the examination under Section 21 a and in the hearing on the objections to the discharge and later on in his application before the United States District Court under Rule 60-B, it was brought out that the bankrupt had been born in the State of New Jersey and had never lived in any other state during the more than sixty years of his existence and that he had practiced law and carried on his business nowhere else but within the State of New Jersey. It was also brought out that the temporary residence was due to a personal situation which had nothing whatsoever to do with the bankruptcy proceeding.

The statement in the petition as to the residence is not a representation and has no bearing whatsoever upon the main case other than as to the question of jurisdiction. Nowhere in the case was it charged or shown that the Federal District of New Jersey was not the proper jurisdictional site for the case. There was not one iota of evidence upon which the court could find that the bankrupt had some illegal or illicit motive in using the temporary address in Long Branch, New Jersey in his petition, particularly were the address of the bankrupt's law office in Lyndhurst, New Jersey, was clearly listed in the domiciliary clause of the petition. A person should not be branded a liar, a cheat, or a person who has no regard for his obligations as a lawyer and officer of the court merely because of the fact that through some personal situation he was living away from his wife at the time of filing the voluntary petition. There is not one iota of evidence in this case to show that there was any illegal or illicit motive in regard to the residence address of the bankrupt and there was no basis for the finding by the United States District Court that,

> "The court can only speculate why Semel insisted upon the Long Branch address."

and to find as a matter of fact

> "that by misnomering his address Semel was able to have his section 21a hearings held in Trenton rather than Newark with an obvious impact on creditor attendance."

The distance between Newark and Trenton is only fifty miles. There is no proof that the bankrupt had the slightest information or knowledge as to the fact that certain hearings in bankruptcy matters in New Jersey are held in Trenton and others are held in Newark. The referee found that,

> "creditors are highly interested in a bankrupt's assets and liabilities, where he may reside in the district is of no interest from a financial viewpoint."

The referee found as a matter of fact that the residence was not fraudulent. Therefore the United States District Court was in error in finding that it was fraudulent and that the bankrupt had some illegal or illicit motive in stating his temporary residence in his unvoluntary petition. Regardless of the outcome of this entire proceeding the bankrupt is entitled to have that portion of the District Court's opinion eradicated or corrected.

POINT IV

The alleged objecting creditor, Federal Supply Corporation, was not the owner of a provable claim at the time the specifications to objections were filed by it.

Specifications to objections to the discharge were filed on *September 12th, 1968* by the Federal Supply Corporation, the alleged objecting creditor. No objections to discharge were filed by anyone else. It was conclusively proved before the referee that prior to the *12th day of September, 1968* and more specifically on *June 19th, 1967*, Federal Supply Corporation had assigned its claim against the bankrupt to one Theodore Gell. Proof of the assignment by Federal Supply Corporation to Theodore Gell is set forth in the transcript of the proceedings held before the referee on June 30th, 1970. There is no denial of the fact that at the time that the specifications to objections were filed and up to the present day, Theodore Gell was and still is the owner of the alleged claim against this bankrupt.

As late as October 12th, 1972 an affidavit was filed by the said Theodore Gell in a New Jersey Superior Court case (Law Division—Passaic County, Docket No. L-32238-66) in which said Theodore Gell still claimed ownership of bonds which the bankrupt personally guaranteed. There was no question but that the legal title to this claim against the bankrupt is owned by Theodore Gell and not the Federal Supply Corporation, the objecting creditor.

The bankrupt, acting as his own attorney, argued the point before the referee on June 30th, 1970. He contended that no one but a creditor, who owns a provable claim, can file objections to his discharge. The referee

did not decide that point because apparently he had already made up his mind to grant the discharge on other grounds. In the transcript of proceedings taken before Referee Tallyn on June 30th, 1970 he said:

> "I am returning these exhibits you have had in the case of Gell v. Semel. There is a question in my mind as to whether or not it applies or whether it was accurate at the time specifications for objections were filed. * * *".

The Federal Supply Corporation did not file a claim. The assignments in evidence prove that the Federal Supply Corporation did not own a provable claim at the time that it filed the objections to the discharge. As above stated, the bankrupt argued the point before Referee Tallyn during the hearing on the specifications for discharge and made objection at that time. Reference is made to the Bankruptcy Act as follows:

> "Section 14-B authorizes objections by 'creditors' with no modifying adjective. However it should be noted that the bankruptcy definition in section 1 (11) states that the term shall 'include' anyone holding a provable claim."

Referee Daniel R. Cowans in his book on bankruptcy law says:

> "Some thought should be given to the fact that in 1938 there was a legislative change substituting the word 'creditors' for 'parties in interest.'"

Probably the legislative intent was towards a narrowing concept of eligibility for objecting to discharge so that even though the objecting creditor may have had some interest in the claim, fact is that its claim was assigned

a long time before to Theodore Gell and that it did not own a *"provable"* claim at the time it filed the specifications to the discharge.

CONCLUSION

The petitioner respectfully contends that the orders under review should be vacated and that he should receive his discharge in bankruptcy.

Respectfully submitted,

LAURENCE SEMEL,
Bankrupt-Petitioner, pro se.

[APPENDICES FOLLOW]

APPENDIX A

Opinion of the United States Court of Appeals
(Filed—June 27, 1973.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 72-2058 and 72-2059

IN THE MATTER OF:

LAURENCE SEMEL,

Bankrupt.

LAURENCE SEMEL, *Appellant* in No. 72-2058
FEDERAL SUPPLY COMPANY, *Appellant* in No. 72-2059

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Submitted Under Third Circuit Rule 12(6)
May 22, 1973

Before:

KALODNER, ALDISERT and ADAMS, *Circuit Judges.*

Appendix A

LAURENCE SEMEL
Lyndhurst, New Jersey
Attorney for Appellant Semel

DAVID M. HOFFMAN
ECKHAUS, GUSTON & HOFFMAN
Wayne, New Jersey
Attorney for Appellant Federal Supply Company

PER CURIAM.

These appeals require us to review an order of the district court vacating an order of the referee in bankruptcy granting appellant Semel's discharge.

After the referee granted Semel's voluntary petition, Federal Supply Company filed seven specifications of objections to discharge. The referee dismissed all seven specifications. The district court, however, sustained specification number two, vacated the referee's order, and denied discharge. Federal Supply contends that the court erred in affirming dismissal of specifications one, four and seven, and Semel claims that the court erred in sustaining specification number two.

We find no error in the court's ultimate disposition of this matter, and will affirm the judgment.

We do, however, wish to clarify the facts surrounding specification number two, which charges a violation of 18 U.S.C. § 152. Section 152 subjects to criminal liability anyone who "knowingly and fraudulently makes a false oath of account in or in relation to any bankruptcy proceeding." The Bankruptcy Act provides that a discharge will be denied whenever the court determines that the petitioner has violated section 152. See 11 U.S.C. § 32(c)

(1). In sustaining this specification, the district court observed that in a "prior" bankruptcy proceeding, Semel avoided bankruptcy by testifying that his assets included over $250,000 in accounts receivable, and that he was in possession of records and books indicating that there existed some possibility of collection. Yet, in the present voluntary bankruptcy proceeding, Semel admitted that he never kept records of accounts receivable, that any amounts owed to him could be ascertained only by reviewing individual files, and that virtually all of these debts were uncollectible. Thus, in the instant proceeding, Semel's schedule of assets listed nothing under "debts due petitioner on open account," and under "unliquidated claims of every nature," reported "[p]ossible claims for professional services rendered, damages, possible fees on legal matters . . . costs and disbursements advanced for clients" with an estimated value of $100.00.

During cross-examination, Semel admitted that he "was in error" when he failed to list outstanding debts owed to him, and conceded that "if somebody undertook to check out these people now, institute suits, prosecute them, that money would be recovered." Soon thereafter, upon order of the referee, Semel submitted a lengthy list of these debts. *See, In re Semel*, 427 F. 2d 651, 654 (3d Cir. 1970). Thus, at the inception of the instant proceeding, Semel denied the existence of debts owed to him, whereas under cross-examination—in the same proceeding—he admitted that monies were owed him, that certain of these might prove collectible, and furnished a list of these debts.

We agree with the district court that "Semel's palpable untruths cannot be overlooked," and recite the

foregoing only to demonstrate that these untruths occurred in the present proceeding, and not a prior proceeding.

The order of the district court will be affirmed.

Circuit Judge

APPENDIX B

Judgment of the United States Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 72-2058 and 72-2059

IN THE MATTER OF:

LAURENCE SEMEL,

Bankrupt

LAURENCE SEMEL, Appellant in No. 72-2058
FEDERAL SUPPLY COMPANY, Appellant in No. 72-2059

(D. C. Bankruptcy No. 541-68)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Present:

KALODNER, ALDISERT and ADAMS, Circuit Judges

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was submitted under Third Circuit Rule 12(6).

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District

Appendix B

Court, filed October 11, 1972, be, and the same is hereby affirmed, with costs taxed against appellants in each case.

Attest:

THOMAS P. QUINN
Clerk

June 27, 1973

APPENDIX C

Opinion of the United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN BANKRUPTCY

IN THE MATTER OF

LAURENCE SEMEL,

Bankrupt.

Appearances:

LAURENCE SEMEL, Esq., Pro Se
Attorney for Bankrupt

ECKHAUS, GUSTON & HOFFMAN, Esqs.
By: DAVID M. HOFFMAN, Esq.
Attorneys for Creditor Federal Supply Company

COOLAHAN, Chief Judge:

This is a bankruptcy discharge matter in which creditor Federal Supply Company seeks review of an order enterde by the late Referee William H. Tallyn dismissing specifications to objections to discharge. A voluntary petition in bankruptcy was filed by the bankrupt, Laurence Semel, on April 11, 1968. Prior to that time Semel was involved in two other bankruptcy proceedings. The first was a proceeding under Chapter XI of the Bank-

ruptcy Act by Semel & Co., a mortgage and loan finance company in which Semel was the dominant figure. Sometime thereafter an involuntary petition in bankruptcy was filed against Semel by creditors of Semel & Co. on the basis on his guarantee of corporate obligations. Semel successfully resisted bankruptcy at that time.

The first meeting of creditors with regard to the voluntary petition took place on May 1, 1968. Section 21-A hearings held pursuant to 11 U.S.C. § 44(a) convened during the summer of 1968. At one of these hearings on May 28, 1968 Semel admitted that he was owed more than a quarter of a million dollars by various clients and debtors. In fact, Semel's voluntary petition filed April 28, 1968, makes scarce mention of these alleged debts. Semel's schedule of assets lists nothing under "debts due petitioner on open account," and under "unliquidated claims of every nature," petitioner reported "[p]ossible claims for professional services rendered, damages, possible fees on legal matters . . ., costs and disbursements advanced for clients" with an estimated value of $100.00.

The Referee therefore ordered Semel to list the undisclosed debts owing to him. A stay of the order was granted by the Referee pending Semel's appeal to the Third Circuit which he lost. *In re Semel,* 427 F. 2d 651 (3d Cir. 1970). At a later date Semel complied with the order of the Referee and submitted a list of his alleged debtors.

During the 21-A hearings on objections to discharge, Semel explained the failure to list debts owing on loans and legal services rendered by claiming that virtually all of those debts were uncollectable. Toward the end of the

hearings Semel admitted on the record that he "was in error" when he neglected to list outstanding debts owing to him, but had done so because he did not regard uncollectable debts as "assets." However, Semel did concede that "if somebody undertook to check out these people now, institute suits, prosecute them, that money would be recovered.* Semel added that he never kept accounts receivable records, and that the debts from clients could be figured only by reviewing individual files. Nonetheless, Semel was, upon order of the Referee, able to prepare a lengthy list of debtors by examining "every conceivable piece of paper I could get my hands on . . . my memory, and . . . [gathering] up whatever information I could . . ."**

On July 9, 1970 the Referee entered an order dismissing the Specifications of objections to discharge numbered one through seven filed by Federal Supply Company, the objecting creditor. At this time Federal Supply pursues only Specifications one, two, four and seven. Because Specification two must be sustained, the Court expresses no opinion as to the remaining specifications dismissed by the Referee.

Under the Bankruptcy Act, a discharge is to be denied whenever the court is convinced by the preponderance of the evidence that the bankrupt has committed an offense punishable by imprisonment under section 152 of Title 18. 11 U.S.C. § 32(c)(1). Section 152 subjects to criminal liability anyone who "knowingly and fraudu-

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* *In re Semel,* B-541-68, Transcript of Section 21-A hearing, June 1, 1968, at 45.

** *Id.* at 68.

lently makes a false oath or account in or in relation to any bankruptcy proceeding." Specification two charges a violation of Section 152 by Semel's failure to list as assets the monies due him from various creditors and clients, which debts, according to Semel himself exceeded on their face the sum of $250,000. The objecting creditor juxtaposes this omission with the testimony of Semel in the prior proceeding a year before in which he successfully fought off an involuntary petition of bankruptcy. At that time Semel persuaded the Referee that the $250,000 in debts was in fact a substantial asset.

For a falsehood under oath to block discharge from bankruptcy under Section 152, it must appear that the falsehood was made knowingly, with fraudulent intent, and with regard to some matter material to the proceedings. *In re Seperis,* 454 F. 2d 195 (3d Cir. 1972); *In re Weinroth,* 439 F. 2d 787 (3d Cir. 1971); *In re Pioch,* 235 F. 2d 903 (3d Cir. 1956). The Referee dismissed Specification two because he found the debts owing to Semel to be "all or substantially all . . . uncollectable." While there is much within the record to contradict this finding, it must be sustained as not clearly erroneous. As the debt was uncollectable, it was not truly an asset, and it omission from the bankruptcy schedule, while knowing and presumably fraudulent, was not material. *E.g., Humphries* v. *Nalley,* 269 F. 607 (5th Cir. 1920).*

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* The Referee properly refused to give any weight to Semel's contention that he had corrected the schedule by subsequent addition of assets upon order of the Referee. Later amendment of a petition knowingly and fraudulently falsely sworn to and filed would not erase criminal liability under Section 152 if in fact the omission were material. *United States* v. *Young,* 339 F.2d 1003 (7th Cir. 1964); *United States* v. *Margolis,* 138 F.2d 1002 (3d Cir. 1943).

If, however, we accept the finding of the Referee, as the bankrupt would have us do, that the debts in question here were actually valueless, the Court then has grave difficulty in ignoring the entirely inconsistent representations made by Semel to the Referee in the prior proceeding only a year before. The evidence of inconsistency is absolutely irrefutable. During hearing on an earlier filed involuntary petition in bankruptcy, *In re Semel,* B. 635-67, Semel testified as follows:

> Q. And did people owe you money on May 1st, 1967?
>
> A. Many people owed me money.
>
> Q. How much money was owed to you on May 1st, 1967?
>
> A. Probably in excess of a quarter of a million dollars.
>
> Q. And who owed you that money?
>
> A. Various people whom I had made loans to and I had loaned money to. I have no record of that personally.
>
> Q. Who were these people?
>
> A. Well, you know that I have been a lawyer for 38 years. A lot of people owe me money.
>
> • • •
>
> I don't have my records with me and I am in no position to give you that information from off the top of my head.
>
> Q. So you cannot substantiate to me or the Court today as to who owes you money totalling a quarter of a million dollars?
>
> A. That is correct, not today I can't, not unless I have my records and books.
>
> • • •

Q. And do you have any unliquidated claims of any other nature against anybody aside from people who owe you money which you think you know the amounts for?

A. Mr. Lehman, there are many people who owe me money but I have no records at hand. And I kept my records at hand. And I never kept my personal records, I had a bookkeeper working for me who took care of my personal records.

• • •

Q. How old is the average aging of this quarter of a million dollars which you say was owed to you by people over the years?

A. I don't know the average aging, but many people owe me money for services rendered and for moneys I have loaned them.

Q. Would you say the best part of it is over six years old?

A. I wouldn't say so.

Q. What would you say?

A. I am in no position to answer that question.

Q. You cannot answer that question at all?

A. I am in no position. I have no books available.

In re Semel, B. 635-67, Transcript of hearing on answer to involuntary petition, August 15, 1967, at 14-16.

It was Semel's unmistakable intention to convince the Referee at the early involuntary petition hearing that his assets included over $250,000 in debts owing to him, that these debts could be easily verified and ascertained by checking his business records, and that there existed at least some possibility of collection. In fact, Semel maintained poor business records, and billings made to his law

firm clients were filed individually without regard to any central filing system listing accounts receivable. Semel's palpable untruths cannot be overlooked.

While it is true that the falsehood which bars Semel's discharge did not occur in the instant proceeding, the Bankruptcy Act, 11 U.S.C. § 32(c)(1), by way of 18 U.S.C. § 152, bars discharge if the bankruptcy has made falsehoods in *any* bankruptcy proceeding. The doctrine of *Raphiel* v. *Morris Plan Industrial Bank,* 146 F.2d 340 (2d Cir. 1944), *cert. denied,* 324 U.S. 879 (1945), that falsehoods occurring in a prior bankruptcy proceeding will not bar discharge in a later proceeding, has no application where the same creditors are involved. To rule otherwise would permit the bankrupt, as he has done in this case, to play fast and loose with the Referee and the bankrupt's creditors. To tolerate the inconsistent testimony of the bankruptcy hereby granting a discharge would impugn the integrity and fairness of the judicial system and undermine the confidence of creditors and the public generally in the courts. *Wald* v. *Longacre,* 34 F. 2d 25 (3d Cir. 1929).

While passing upon the subject of adjudicative integrity, the Court wishes to comment upon Specification one which charges that at the time Semel filed his voluntary petition in bankruptcy, he actually resided with his wife at 60 Parkway Drive, East Orange, New Jersey, whereas his petition avers that he resided at 104 Broadway, Long Branch, New Jersey. During the Section 21-A hearings, Semel attempted to defend the statement of residence found in his petition, only to wither under the fire of testy cross-examination and concede that the East Orange address was correct. While the Referee rightly

concluded that this defalcation was hardly grave enough to bar the bankrupt's discharge, citing 1 Collier on Bankruptcy ¶ 14.25 at 1336-38, it reflects seriously on Semel's attitude toward his obligations as an officer of the Court. The Court can only speculate why Semel insisted upon the Long Branch address until pressed to his later admission, but it is true that the vast number of Semel's creditors were located in the northern New Jersey and New York area, and it is also true that by misnomering his address Semel was able to have his Section 21-A hearings held in Trenton rather than Newark, with an obvious impact on creditor attendance. Finally, despite his then recent involvement with prior bankruptcy proceedings, Semel did during his Section 21-A hearings flatly state that he had never been involved in a bankruptcy before.

To reiterate such blanket disregard for truthfulness before the Court cannot be gainsaid. The order of the Referee dismissing the objections of the creditor Federal Supply Company must be vacated and the discharge of the bankrupt denied on the grounds alleged in Specification two.

Let an appropriate order be submitted.

APPENDIX D

Petition

(Filed—April 11, 1968)

IN THE

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY

In the matter of

LAURENCE SEMEL,

Bankrupt

In Bankruptcy No. 541-68

To the Honorable Judges of the District Court of the United States for the District of New Jersey

THE PETITION of Laurence Semel, residing at 104 Broadway, in the City of Long Branch, County of Monmouth State of New Jersey by occupation an attorney and employed by self * * * who states that he has not conducted any business or used any assumed, trade or any other names or designations during the past six years, other than as set forth in the above caption,

RESPECTFULLY REPRESENTS:

1. Your petitioner has had his principal place of business [*or* has resided, *or* has had his domicile] at 10 Stuyvesant Avenue, Lyndhurst, New Jersey 07071 within the

above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

WHEREFORE your Petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

LAURENCE SEMEL,
Petitioner
Laurence Semel

(Verified by Petitioner on March 26, 1968.)

APPENDIX E

Schedule B-3 (Statement of All Property of Debtor)

CHOSES IN ACTION

a

Debts due petitioner on open account.

None — NONE

Total — NONE

b

Policies of insurance.

None — NONE

c

Unliquidated claims of every nature, with their estimated value.

Possible claims for professional services rendered, damages, possible contingent fees on legal matters heretofore handled, costs and disbursements advanced for clients. — 100 00

d

Deposits of money in banking institutions and elsewhere.

None — NONE

Total — 100 00

/s/ LAURENCE SEMEL
Laurence Semel
Petitioner